

O'MELVENY & MYERS LLP

BEIJING
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IRVINE
LONDON
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1625 Eye Street, NW
Washington, D.C. 20006-4001
TELEPHONE (202) 383-5300
FACSIMILE (202) 383-5414
INTERNET: www.omm.com

NEWPORT BEACH
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March 1, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WRITER'S DIRECT DIAL
(202) 383-5382

WRITER'S E-MAIL ADDRESS
knewman@omm.com

Re: WC Docket No. 02-359

Dear Ms. Dortch:

Verizon Virginia Inc. ("Verizon") encloses a copy of the New York Public Service Commission's *Order Granting Verizon's Petition and Complaint*, Case 03-C-0636, (Feb. 13, 2003) ("*NY Order*") as supplemental authority in support of its *Petition for Reconsideration and Clarification*. Verizon explained in its *Petition* that the evidence in the record does not support two factual findings in the Bureau's *Order*. Specifically, Verizon explained that, contrary to the language in the *Order*, the winback functions Cavalier performs are *not* comparable to the functions that Verizon performs when a customer migrates to Cavalier; and that Verizon does *not* charge Cavalier for the functions for which Cavalier was seeking to charge Verizon. *Petition* at 8.

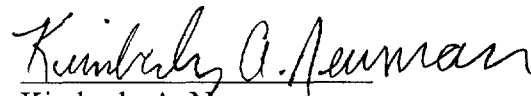
In the *NY Order*, the New York PSC disallowed a tariff filed by an affiliate of AT&T Communications of New York, Inc. ("AT&T") imposing a "customer transfer charge" on Verizon New York Inc. ("Verizon NY") when an AT&T customer migrates to Verizon NY. The facts in the New York proceeding are virtually identical to the facts in the Cavalier arbitration. AT&T's proposed customer transfer charge mirrored Verizon NY's "hot cut" charge, just as Cavalier's proposed winback charge mirrored Verizon's UNE Installation charge. Verizon NY noted that it did not charge AT&T for customer transfers, just as Verizon noted that it did not charge Cavalier for winbacks. Verizon NY argued that AT&T did not perform a hot cut when a customer transfer takes place, and therefore did not perform the "similar such activities" reflected in AT&T's proposed tariff, just as Verizon argued that Cavalier did not perform the same functions in a winback situation that Verizon did in a UNE Installation situation. Finally, AT&T acknowledged that it did not perform all of the functions that Verizon performs to accomplish a hot cut, just as Cavalier acknowledged that it did not perform all of the functions that Verizon performs to accomplish a UNE Installation.

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In rejecting AT&T's proposed tariff, the New York PSC held that while AT&T's proposed customer transfer charge was intended to mirror Verizon's hot cut charge, "the tasks that [AT&T] performs when ... customers are transferred to Verizon are not analogous to most of the tasks Verizon performs." *NY Order* at 5. In addition, the New York PSC found that "it is Verizon that does the lions' share of the physical network activity necessary for a customer transfer," and the costs for which AT&T sought to recover are "retail costs traditionally recovered in retail rates." *Id.*

Should you have any questions, please do not hesitate to contact me at (202) 383-5382. Thank you.

Sincerely,


Kimberly A. Newman
of O'Melveny & Myers LLP

encl.

cc: Stephen T. Perkins
Martin W. Clift, Jr.
Richard U. Stubbs
Christopher Savage
Ms. Terri Natoli
Mr. Jeremy Miller
Mr. Brad Koerner
Mr. Marcus Maher
Mr. Richard Lerner
Mr. John Adams
Ms. Margaret Dailey
Ms. Deena Shetler

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 21, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 03-C-0636 - Complaint of Verizon New York Inc. Concerning
Customer Transfer Charges Imposed by TC
Systems, Inc.

ORDER GRANTING VERIZON'S PETITION AND COMPLAINT
(Issued and Effective February 13, 2004)

BY THE COMMISSION:

BACKGROUND

TC Systems, Inc.¹ filed an amendment to its Access
Services Tariff P.S.C. No. 3 on November 1, 2002 to impose
customer transfer charges when a local customer is transferred
from TC Systems to an incumbent local exchange carrier (ILEC) or
in some cases to another competitive local exchange carrier
(CLEC). In this order we grant Verizon's complaint.

TC Systems Tariff

The tariff specifies that TC Systems may increase the
rates "to an amount equal to the rate charged by the incumbent
LEC for similar such activities." The tariff imposes a charge
of \$35.00 per voice-grade (DS0) facility per customer transfer

¹ TC Systems, Inc., TC Systems, and AT&T Communications
(collectively "TC Systems, Inc.").

and \$600.00 for an expedited transfer.² For a high capacity facility (DS1), the tariff imposes a charge of \$275 per customer transfer and \$600.00 for an expedited transfer. These wholesale customer transfer charges are applicable only where customers are served by UNE-L (loop) facilities, not UNE-P (platform) customers.

Verizon New York Inc. Complaint and Petition

On April 25, 2003 Verizon New York Inc. (Verizon) filed a Petition and complaint with the Commission concerning the customer transfer charges imposed by TC Systems.³ Verizon requested that the Commission review the validity of TC Systems' customer transfer charges. Verizon also requested that the Commission reduce those customer transfer charges to zero on a temporary basis pending the conclusion of the proceeding.

Verizon claims that it does not charge TC Systems for customer transfers. Verizon states that the customer transfer charges imposed by TC Systems do not reflect work performed by TC Systems at the request of Verizon, are not wholesale charges, and should not be imposed upon Verizon. Verizon claims that TC Systems' customer transfer charge is intended to be a mirror of the \$35 hot-cut charge imposed by Verizon, yet TC Systems does not perform a hot-cut when a customer transfer takes place, and thus, these are not "similar such activities" as reflected in TC Systems' tariff.

TC Systems' Response to Verizon Complaint

On May 22, 2003 TC Systems responded to Verizon's petition. TC Systems notes that it is entitled to recover costs

² The \$600 expedite service charge for DS0 service transfer contained in TC Systems' tariff and referenced in Verizon's complaint was a clerical error. TC Systems indicates the correct charge for DS0 expedite service is \$49.

³ Letter to Honorable Janet Deixler, former Secretary to the Commission.

of work it performs when a customer transfers from its system to that of an ILEC or another CLEC. TC Systems further notes that it performs numerous manual provisioning tasks necessary to complete such a transfer. TC Systems states that the customer transfer is at the request of Verizon and that the charges apply when TC Systems receives a local service request (LSR) from Verizon. TC Systems also points out that the tariff was lawfully filed with the Commission and remains in effect.

In response to Verizon's claim that TC Systems' customer transfer charges are not mirroring charges to the Verizon hot-cut charges, TC Systems acknowledges that it does not perform all of the functions that Verizon performs for a hot-cut, but that it must perform many similar functions to enable a customer transfer. TC Systems submitted a list of each function performed by Verizon for a hot-cut and identified those functions from the list that it must perform to effectuate a customer transfer. TC Systems states that its charges for transfer functions do not exceed those of Verizon for similar functions performed.⁴ TC Systems notes that the cost for the transfer functions it performs actually exceed the \$35 Verizon rate.

⁴ The two-wire hot-cut rate implemented by the Commission Order deciding Module 3 of the Verizon Second UNE proceeding for basic and expedite service was \$185 and \$271, respectively. Case 98-C-1357, Order on Unbundled Network Element Rates (issued January 28, 2002). However, the Verizon Incentive Plan (VIP), approved shortly thereafter, provided for a negotiated rate of \$35 for both basic and expedited two-wire and four-wire individual hot-cuts. Case 98-C-1945 and 98-C-1357, Order Instituting Verizon New York Inc. Incentive Plan (issued February 27, 2002). Additionally, the VIP resulted in the institution of a proceeding which is examining new hot-cut processes and associated costs on an individual and bulk basis that are currently under examination in the Commission's Bulk Hot-Cut proceeding. Case 02-C-1425, Order Instituting Proceeding (issued November 22, 2002).

Subsequent Responses

On September 22, 2003 TC Systems provided further details to staff and Verizon concerning the functions it performs for a DS0 level customer transfer. TC Systems explained that it makes the customer service record (CSR) available to Verizon and coordinates with Verizon to ensure no service interruption or degradation. On September 26, 2003 Verizon responded that it had no objection in principle to a charge for the provision of a CSR, however, unless TC Systems justified a different rate through the submission of a fully documented cost study it may only charge Verizon's rate, which is approximately ten cents.⁵ On November 10, 2003 TC Systems further elaborated on its DS1 charges at Staff's request. Verizon responded on November 12, 2003 that these charges were not legitimate wholesale functions. Finally, on December 3, 2003 staff met with TC Systems via teleconference and the company subsequently provided and described an updated spreadsheet on the functions it performs for a DS0 customer transfer. At this meeting staff further queried TC Systems about the basis for its DS1 charges.

DISCUSSION

The Commission's initial focus associated with the transfer of customers centered on Verizon's ability to allow CLECs to obtain customers. Those efforts resulted in the development by Verizon of an efficient operational support system to allow electronic ordering by CLECs. As the market developed, churn coupled with Verizon "win back" efforts have seen customers moving back to Verizon. CLECs, which have historically been paying Verizon for processing their wholesale orders, sought to "level" the playing field and began to

⁵ Verizon Tariff PSC No. 9, section 10.9.2.

institute what they termed "mirroring charges" to process Verizon's wholesale orders.

In the past, rather than requiring CLECs like TC Systems to submit cost studies to verify individual charges, the Commission allowed CLECs to set rates based on the ILEC rates. However, as Verizon does not separately charge for a customer transfer, and has no such wholesale tariff, TC Systems has based its rates on purportedly analogous rates in Verizon's wholesale tariff for a hot cut (for DS0 loops) and for provisioning a 4-wire circuit (for DS1 loops). The problem is the tasks that TC Systems performs when these types of customers are transferred to Verizon are not analogous to most of the tasks Verizon performs. Indeed, while TC Systems does some administrative work (provides a customer service record (CSR) or circuit identification number to Verizon, processes a Local Service Request Order (LSR), and performs some tasks to coordinate the transfer and update two databases -- a telephone numbering database and the E911 database), it is Verizon that does the lions share of the physical network activity necessary for a customer transfer.

TC Systems has not shown that these costs, other than CSR costs which are negligible, warrant explicit recovery. The coordination of discontinuing billing is clearly a retail function. If a customer were to simply disconnect its retail service TC Systems would have to review an order form and perform some coordination activities and administrative tasks such as updating databases. These retail costs are traditionally recovered in retail rates. In contrast to TC Systems rate design, Verizon recovers many of the disconnect costs associated with its activities through a non-recurring charge imposed at the time of installation. Therefore, supported customer transfer costs are more appropriately

recovered, if they are not already, in retail rates, or in up front connection charges, but not in a separate charge, such as TC System's customer transfer charge.

Under different circumstances, it may be appropriate to reassess the wholesale market so that every company that actually performs a hot-cut could impose reciprocal charges to reflect the costs associated with that wholesale activity.

CONCLUSION

TC systems' DS0 and DS1 customer transfer charges should be eliminated and Verizon's complaint granted.

The Commission orders:

1. Verizon New York Inc.'s petition and complaint is granted, consistent with the discussion in this order.
2. TC Systems, Inc.'s is directed to file a cancellation supplement, effective no later than March 1, 2004, to cancel the tariff amendments listed in Appendix A
3. The requirements of newspaper publication pursuant to Section 92(2) of the Public Service Law are waived.
4. This case is closed.

By the Commission

(SIGNED)

JACLYN A. BRILLING
Secretary

Filing by: TC SYSTEMS, INC.

P.S.C. No. 3 - Telephone

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